

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

THOMAS ANTHONY FERRARA,

Plaintiff,

v.

**CIVIL ACTION NO. 2:12-CV-88
(Judge Bailey)**

PURDUE, GILMER WARDEN,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. By Local Rule, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Kaull filed his R&R on April 9, 2013 [Doc. 10]. In that filing, the magistrate judge recommended that this Court dismiss the plaintiff's complaint without prejudice for failure to prosecute.

Pursuant to 28 U.S.C. § 636 (b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo*

review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b). The docket sheet reflects that service was accepted on April 11, 2013 [Doc. 11]. To date, no objections have been filed.

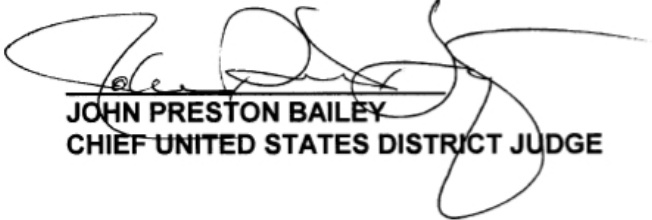
Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's Report and Recommendation [**Doc. 10**] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, this Court hereby **DISMISSES WITHOUT PREJUDICE** the plaintiff's Complaint [**Doc. 1**]. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court.

Finally, this Court finds that the petitioner was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action will result in a waiver of appellate rights. Because the petitioner has failed to object, he has waived his right to seek appellate review of this matter. See **Wright v. Collins**, 766 F.2d 841, 844–45 (4th Cir. 1985).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: May 10, 2013.



JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE